

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

OPAL HARGER, *et al.*

Plaintiffs,

v.

U.S. DEPARTMENT OF LABOR,
and THE NATIONAL INSTITUTE
OF OCCUPATIONAL SAFETY
AND HEALTH,

Defendants.

NO. CV-06-5071-RHW

**ORDER GRANTING MOTION
TO DISMISS**

Before the Court is Plaintiffs' Motion to Dismiss Plaintiffs Hengen/Herman, Bischoff, Howard, Pritchard/Jones, Caputo/Mundy and Harger with Prejudice (Ct. Rec. 192). This motion was heard without oral argument.

The above-listed Plaintiffs move the Court to dismiss their cases with prejudice due to the recent approval of their EEOICPA claims and the full payment of benefits. Plaintiffs also seek an order from the Court finding as a fact that Defendant Department of Labor "acknowledged and ratified" the liability alleged in this lawsuit by making benefits payments to the instant Plaintiffs (Ct. Rec. 194, p. 2). Defendants have no objection to the dismissal of these Plaintiffs, but object to the additional language requested by Plaintiffs.

The Court previously addressed and denied a similar argument advanced by Plaintiffs, noting that the EEOICPA awards were obtained "through an administrative process separate from this litigation," which did not take place

1 under the Court's jurisdiction (Ct. Rec. 122, p. 4). Plaintiffs now ask the Court to
2 judicially sanction a change in the parties' legal relationship, despite the fact that
3 this change occurred outside of the Court's jurisdiction, based on facts that have
4 not been conclusively litigated or admitted in this lawsuit. The Court has no
5 authority to do so.

6 Accordingly, **IT IS HEREBY ORDERED:**

7 1. Plaintiffs' Motion to Dismiss Plaintiffs Hengen/Herman, Bischoff,
8 Howard, Pritchard/Jones, Caputo/Mundy and Harger with Prejudice (Ct. Rec. 192)
9 is **GRANTED in part**.

10 2. The claims of Plaintiffs Hengen/Herman, Bischoff, Howard,
11 Pritchard/Jones, Caputo/Mundy and Harger are **DISMISSED with prejudice**.
12 These Plaintiffs are now dismissed from this matter.

13 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
14 Order and to provide copies to counsel.

15 **DATED** this 8th day of January, 2009.

16 *S/ Robert H. Whaley*

17 ROBERT H. WHALEY
18 Chief United States District Judge

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